

Hon. Mary K. Dimke

Marc Rosenberg, WSBA No. 31034
LEE SMART, P.S., INC.
1800 One Convention Place
701 Pike Street
Seattle, WA 98101-3929
Phone: (206) 262-8308
Facsimile: (206) 624-5944
mr@leesmart.com

Attorneys for Defendants
Giga Watt, Inc., Dave Carlson,
Leonid Markin and Edward Khaptakhaev

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON AT SPOKANE

ALEX MCVICKER and MARK
MOSS, individually and on behalf of
all others similarly situated,

Plaintiffs,

vs.

GIGA WATT, INC.; *et al.*,

Defendants,

RAYMOND BALESTRA, individually
and on behalf of all others similarly
situated,

Plaintiffs,

vs.

GIGA WATT, INC., ET AL.

Defendants.

No. 2:18-CV-00100-MKD

No. 2:18-CV-00103-MKD

JOINT REPORT ON STATUS OF
BANKRUPTCY PROCEEDINGS

1 On December 14, 2018, proceedings in the above-captioned matter were
2 stayed based upon the filing by Defendant Giga Watt, Inc. of a Chapter 11
3 bankruptcy petition in the matter *In re Giga Watt, Inc.*, U.S. Bankruptcy Court for
4 the Eastern District of Washington, Case No. 18-03197-FPC. (Dkt 35).

5 On September 12, 2023, the Parties were directed to file a status report
6 advising the Court as to the status of the bankruptcy proceedings. (Dkt 42).

7 The Parties' joint status report on the pending bankruptcy proceedings,
8 is provided below.

9 The Giga Watt, Inc. bankruptcy has a long and complicated history and is
10 still ongoing. The bankruptcy has spawned four adversary proceedings, two of
11 which have been resolved.¹ There have also been two appeals, one of which has
12 resolved after going to the Ninth Circuit Bankruptcy Panel. *In re Giga Watt, Inc.*,
13 No. 2:18-BK-03197, 2021 WL 321890, at *1 (B.A.P. 9th Cir. Jan. 29, 2021)
14 (affirming denial of reconsideration of order granting trustee's motion for sale of
15 certain assets to a third party free and clear).

16 Currently, the last docket entry in the primary bankruptcy matter
17 (bankruptcy docket 1019) was entered 09/12/23, and it is an amendment to a
18 creditor's noticing address. There are ongoing proceedings in the primary
19 bankruptcy, two ongoing adversary proceedings, and an ongoing appeal. Since
20 its inception as a voluntary bankruptcy proceeding under Chapter 11, this
21 bankruptcy has been converted into a Chapter 7 proceeding. There have been
22

23
24
25 ¹ *Waldron v. Carlson and Jane Doe I et al*, Case No. 19-80012-FPC. (closed); *Dam v. Waldron et al*,
Case No. 20-80020-FPC (closed); *Waldron v. Perkins Coie LLP et al*, Case No. 20-80031-FPC; *Waldron v. Dam*,
Case No. 21-80053-FPC.

1 limited orders granting relief from the automatic bankruptcy stay, but no general
2 lifting of the bankruptcy stay, which we understand to remains in force.

3 There are currently nine opinions on Westlaw related to this case, mostly
4 from the bankruptcy court. They are provided below in chronological order.

5 • *Balestra v. Giga Watt, Inc.*, No. 2:18-CV-00103-SMJ, 2018 WL
6 8244006, at *3 (E.D. Wash. June 28, 2018) (Order Granting Motion for
7 Appointment as Lead Plaintiff and Approval of Selection of Counsel).

8 • *In re Giga Watt, Inc.*, No. 18-03197-FPC7, 2020 WL 6157104
9 (Bankr. E.D. Wash. Oct. 20, 2020), *aff'd sub nom. Dam v. Waldron*, No. 2:20-
10 CV-00391-SAB, 2021 WL 6137346 (E.D. Wash. July 30, 2021) (Findings and
11 Conclusions for Order Authorizing Trustee's Sale of Moses Lake Equipment).

12 • *In re Giga Watt, Inc.*, No. 2:18-BK-03197, 2021 WL 321890 (B.A.P.
13 9th Cir. Jan. 29, 2021) (affirming denial of reconsideration as to order granting
14 trustee's motion for the sale of certain assets to a third party free and clear).

15 • *Dam v. Waldron*, No. 2:20-CV-00391-SAB, 2021 WL 6137346
16 (E.D. Wash. July 30, 2021) (Order on Appeal Affirming Approval of the Sale of
17 Moses Lake Equipment and Related Relief, and Approving Bid Procedures).

18 • *In re Giga Watt, Inc.*, No. 18-03197-FPC7, 2021 WL 1584527
19 (Bankr. E.D. Wash. Apr. 22, 2021) (Order Holding Adversary Proceeding is Not
20 a Core proceeding).

21 • *In re Giga Watt, Inc.*, No. 18-03197-FPC7, 2021 WL 1597870
22 (Bankr. E.D. Wash. Apr. 22, 2021) (Order denying Motion to Compel Arbitration
23 and Stay).

1 • *In re Giga Watt, Inc.*, No. 18-03197-FPC7, 2021 WL 15877238
2 (Bankr. E.D. Wash. Apr. 22, 2021) (Order Granting Trustee's Motion to Strike
3 Jury Demand).

4 • *In re: Giga Watt, Inc.*, No. 18-03197-FPC7, 2021 WL 4436941
5 (Bankr. E.D. Wash. Sept. 27, 2021) (finding violation of automatic stay, denying
6 sanctions, and identifying claims plaintiff could proceed on in bankruptcy).

7 • *Matter of Giga Watt, Inc.*, No. 22-35104, 2022 WL 17883793, at *1
8 (9th Cir. Dec. 23, 2022) (dismissing as moot appeal of denial to compel
9 arbitration in an adversary).

10 Some substantive events and orders in the bankruptcy court, followed by
11 the bankruptcy court's docket numbers, are provided as follows:

12 11/19/18 Voluntary Petition for Chapter 11 bankruptcy filed. (1)
13 11/22/18 Amended Voluntary Petition for Chapter 11 bankruptcy filed. (11).
14 12/12/18 Statement of financial affairs filed. (42).
15 12/19/18 APPOINTMENT of Unsecured Creditors' Committee. (56).
16 12/26/18 ORDER Denying Debtor in Possession's Motion for Interim and
17 Final Orders Authorizing Debtor to Incur Post-Petition Debt (74).
18 01/18/19 ORDER Granting Motion to Appoint Chapter 11 Trustee. (121).
19 01/23/19 APPOINTMENT of Trustee.
20 01/23/19 AMENDED STATEMENT of Financial Affairs filed. (142).
21 01/24/19 ORDER APPROVING Appointment of Chapter 11 Trustee. (146)
22 01/28/19 Deadline for filing claims
23
24
25

03/04/19 ORDER Granting Motion to Extend Deadline to File Proofs of Claim to April 19, 2019, and Approving Procedure Relating to Notice to Token Holders and Miner Owners. (219).

04/16/19 ORDER Granting Stipulated Motion Between the Chapter 11 Trustee and the Port of Douglas County Regarding the Lease, the Application of the Surety Deposit to the Claims of the Port of Douglas County, and the Modification of the Automatic Stay. (276).

04/22/19 Adversary case filed, *Waldron v. Carlson and Jane Doe 1 et al*, Case No. 19-80012 commenced. (281). COMPLAINT for Recovery of money/property - 548 fraudulent transfer.

05/10/19 ORDER Granting Chapter 11 Trustee's Motion for Order Approving Agreement With Moses Lake Landlords. (300).

05/20/19 Deadline for filing claims (govt.)

05/20/19 ORDER Granting Motion to Approve Moses Lake Three-Way Agreement. (309).

05/28/19 ORDER Granting Motion to Approve Compromise With Executive Flight, Inc. (318).

08/329/19 ORDER Granting Request for (1) Expedited Hearing on Authority to Re-Open the TNT Facility and to Borrow on Interim Basis; (2) Authorizing Re-Opening of TNT Facility; and (3) Approving Financing on Interim Basis With Super-Priority Unsecured Status and Order Setting Final Hearing on Request to Borrow. (365).

10/01/19 ORDER Granting Financing on Final Basis With Super-Priority Unsecured Status. (380).

1 11/14/19 ORDER Granting Motion to Modify the Automatic Stay regarding
2 stipulated motion with Port of Douglas County. (417).
3 12/12/19 DISCLOSURE Statement. Filed by Benjamin A Ellison on behalf of
4 Unsecured Creditors' Committee. (431).
5 03/10/20 ORDER Granting Motion to Approve Compromise and Settlement
6 Pursuant to FRBP 9019. (508).
7 03/24/20 ORDER Granting Relief from Stay, Abandonment of Property, and
8 Denying Waiver of FRBP 4001(a)(3) re Creditor Chelan Douglas
9 Regional Port Authority, formerly the Port of Douglas County. (515).
10 04/02/20 ORDER Denying Motion to Compel Trustee to Abandon and Motion
11 for Allowance of Administrative Expenses. (526).
12 04/09/20 ORDER Granting Motion To Sell Property Free and Clear of Liens:
13 Electrical Equipment. (540).
14 05/06/20 ORDER Granting Motion To Sell Property Under § 363(b). (589).
15 05/19/20 ORDER Approving: (1) Sale of TNT Facility and Trailer Equipment
16 Free and Clear of Liens, Claims and Interests, Subject to
17 Overbidding, Approving Notice Thereof; and (2) Assumption and
18 Assignment of Leases and Power Contract. (602).
19 06/05/20 Adversary case, *Dam v. Waldron et al*, Case No. 20-80020. (627).
20 06/11/20 ORDER Approving Settlement With Port. (619).
21 06/25/20 APPEAL to Bankruptcy Appellate Panel regarding Order on Motion
22 to Sell Property Free and Clear. (629).
23 07/02/20 ADVERSARY Proceeding 2:19-ap-80012 Closed.
24 07/03/20 STATUS Report for Interim Investigatory Report. (631).
25

1 07/06/20 ORDER Granting Motion for 2004 Examination. (637).
2 09/14/20 ORDER Granting in part, Denying in part Motion for 2004
3 Examination. (715).
4 09/24/20 ORDER Granting Motion To Sell Property Free and Clear of Liens:
5 Condominium in Quincy, WA. (732).
6 09/24/20 ORDER Granting Motion to Approve Compromise and Settlement
7 Pursuant to FRBP 9019 With Allrise. (733).
8 09/30/20 ORDER Granting Motion to Convert Case from 11 to 7. (744).
9 10/20/20 FINDINGS of Fact and Conclusions of Law in Support of Order
10 Authorizing Trustee's Sale of Moses Lake Equipment. (764).
11 10/20/20 ORDER Approving the Sale of Moses Lake Equipment and Related
12 Relief, and Approving Bid Procedures. (765).
13 10/23/20 APPEAL Transmittal to District Court regarding Order on Motion to
14 Sell Property Free and Clear. (774).
15 10/23/20 REPORT of Sale. 776).
16 10/29/20 FINAL Account Ch 11 with Attached: Ledger Report, Operating
17 Statement, and Bank Transaction Report. (787).
18 11/16/20 REPORT of Sale. (802).
19 12/02/20 ORDER Allowing Chapter 11 Administrative Claim of Giga Plex,
20 LLC and MLDC1, LLC. (829).
21 12/22/20 ORDER Converting Application for Administrative Expenses and
22 Declaratory Relief to an Adversary Proceeding. (846).
23 01/18/21 Deadline for objecting to discharge
24
25

03/19/21 ORDER Granting Motion to Approve Compromise and Settlement
with RI Landlord. (877).

08/26/21 ADVERSARY Proceeding 2:20-ap-80020 Closed.

10/07/21 Notice of Appeal regarding Memorandum Decision 877. (923).

12/13/22 MOTION For Contempt Against Perkins Coie LLP, Lowell Ness,
Byrnes Keller Cromwell LLP, Ralph E. Cromwell Jr., Joffrey
McWilliam, MOTION for Sanctions. (Dkt 970).

12/13/22 MEMORANDUM in Support of Trustee's Motion to Find the Perkins
Group in Contempt and to Impose Sanctions. (Dkt 971).

01/03/23 Objection to Motion for Contempt. (Dkt 976).

There are also multiple motions for compensation and compensation
awards, as well as declaration and exhibits to support the motions and
other activity noted on the docket.

The Parties believe that this report advises the Court as to the status of the
pending bankruptcy proceedings. However, the Parties will further supplement
this report if directed by the Court.

SUBMITTED JOINTLY this 17th day of March, 2022.

BERSKIN JOHNSON & TOWNSEND PLLC

By: s/ Roger Townsend (via consent)
Roger M. Townsend, WSBA No. 25525
Attorney for Plaintiff
Alex McVicker and Mark Moss

1 1000 2nd Avenue, Suite 3670
2 Seattle, WA 98104
3 (206) 652-8660
4 rtownsend@bjtlegal.com

5 LEE SMART, P.S., INC.

6 By: s/ Marc Rosenberg
7 Marc Rosenberg, WSBA No. 31034
8 Of Attorneys for Defendants
9 Giga Watt, Inc., Dave Carlson,
Leonid Markin and
Edwrđ Khaptakhaev

10 1800 One Convention Place
11 701 Pike Street
12 Seattle, WA 98101
13 (206) 624-7990
14 mr@leesmart.com